

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 27, 2000

IN RE:

**PETITION BY ICG TELECOM GROUP, INC.
FOR ARBITRATION OF AN INTERCONNECTION
AGREEMENT WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
252(b) OF THE TELECOMMUNICATIONS ACT OF 1996**

)
)
)
)
)
)
)

**DOCKET NO.
99-00377**

CLARIFICATION OF FINAL ORDER OF ARBITRATION

This matter came before the Directors of the Tennessee Regulatory Authority ("Authority") acting as Arbitrators prior to a regularly scheduled Authority Conference on October 10, 2000. The purpose of the arbitration was to address filings containing proposed contract language filed by ICG Telecom Group, Inc. ("ICG"), a competing local exchange telecommunications carrier ("CLEC"), and BellSouth Telecommunications, Inc. ("BellSouth"), an incumbent local exchange telecommunications carrier ("ILEC"), on August 31, 2000.

I. PROCEDURAL BACKGROUND

On May 27, 1999, ICG filed a *Petition for Arbitration*. In its petition, ICG requested that the Authority arbitrate an interconnection agreement between ICG and BellSouth. ICG filed the petition pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 ("the Act"). *See* 47 U.S.C. § 252(b).

Under Sections 251 and 252 of the Act, ILECs and CLECs have a duty to negotiate in good faith the terms and conditions of agreements regarding facilities access, interconnection,

resale of services, and other arrangements contemplated under these sections. If the parties are unable to reach a voluntary agreement, either party may petition the state commission for arbitration. *See id.* § 252(b)(1). A final interconnection agreement, whether negotiated or arbitrated, must be reviewed by the state commission in order to determine whether it complies with the Act. *See id.* § 252(e)(1).

The Directors, sitting as Arbitrators under the Act, heard this arbitration on November 22, 1999 and publicly deliberated this matter immediately following the March 14, 2000 Authority Conference. Prior to the start of the deliberations, the parties informed the Arbitrators that all of the issues raised in the petition had been resolved except for Issue 4, involving the provision of enhanced extended loops (“EELs”), and Issue 11, involving BellSouth’s reliance on ICG’s binding forecasts.

On August 4, 2000, the Arbitrators entered a *Final Order of Arbitration*. As to Issue 4, the Arbitrators concluded as follows: “It is reasonable to require BellSouth to offer ICG extended loop links consisting of combinations of unbundled local loops that are cross-connected to interoffice transports pursuant to applicable FCC orders and federal rulings. Furthermore, BellSouth should not charge a monopoly price to combine these elements, but should charge the sum of their prices at TELRIC rates.”¹ As to Issue 11, the Arbitrators required “BellSouth to commit to the requisite network buildout and necessary support when ICG agrees to a binding forecast of its traffic requirements in the specified period and agrees to assume financial responsibility for the provision of the buildout.”² The Arbitrators did not request final best offers or the submission of proposed contract language.

¹ *Final Order of Arbitration*, p. 7 (entered August 4, 2000).

² *Id.* at 9.

On August 31, 2000, both parties filed documents containing proposed contract language. The parties explained in their filings that they had conducted negotiations since the entry of the *Final Order of Arbitration*, but had not been able to agree on language for Issues 4 and 11. The Arbitrators addressed these filings prior to the October 10, 2000 Authority Conference. Although the Arbitrators initially noted that their decisions were clearly explained in the *Final Order of Arbitration*, they agreed to provide some clarification on their own motion. Thereafter, the Arbitrators provided the following comments.

II. ISSUE 4: SHOULD A LOCAL LOOP COMBINED WITH DEDICATED TRANSPORT BE PROVIDED AS A UNE? IF SO, WHAT IS THE PROPOSED RATE?

In the context of this proceeding, an enhanced extended loop (“EEL”) consists of an unbundled local loop that is cross-connected to an interoffice transport. EELs allow ICG to reach customers served by BellSouth’s central office without having to collocate in that central office. The issue before the Arbitrators is whether BellSouth must make EELs available to ICG and, if so, at what price.

The interconnection agreement should reflect, as does the *Final Order of Arbitration*, that BellSouth will provide ICG with EELs throughout BellSouth’s Tennessee network. Further, BellSouth shall provide the EELs, in all instances, to ICG at the sum of the TELRIC³ rates for each individual element.

BellSouth’s proposed language restricted its offering of EELs to ICG to certain Metropolitan Statistical Areas in Density Zone 1. BellSouth did not present any justification for this restriction in either the most recent filing or during the arbitration. Given the lack of support

³ TELRIC is an acronym for Total Elemental Long Run Incremental Cost.

for the restriction, the Arbitrators refuse to find that the restriction should be placed in the parties' final interconnection agreement.

III. ISSUE 11: SHOULD BELL SOUTH COMMIT TO THE REQUISITE NETWORK BUILDOUT AND NECESSARY SUPPORT WHEN ICG AGREES TO A BINDING FORECAST OF ITS TRAFFIC REQUIREMENTS IN A SPECIFIED PERIOD?

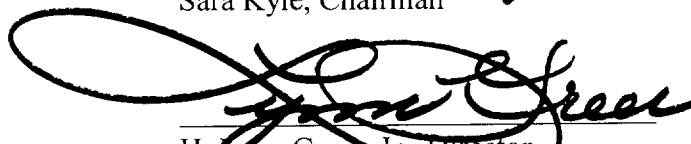
The *Final Order of Arbitration* imposes two requirements on BellSouth. First, BellSouth shall honor all of ICG's binding forecasts as long as ICG compensates BellSouth at the mutually agreed rate. In the most recent filings, the parties asked the Arbitrators to set a rate. The Arbitrators refuse to do so, however, because the parties did not raise this issue during the arbitration. Second, BellSouth shall allow ICG to adjust its forecast with changes in market conditions and business plans as long as ICG compensates BellSouth for any additional costs.

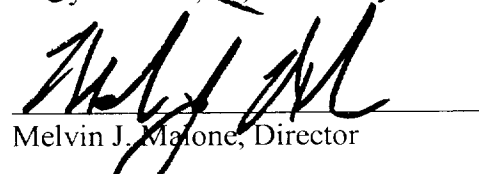
IV. ORDERED

The foregoing Order reflects the Arbitrators' clarification, on their own motion, of the *Final Order of Arbitration* entered on August 4, 2000.

TENNESSEE REGULATORY AUTHORITY,
BY ITS DIRECTORS ACTING AS ARBITRATORS


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary